IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2269 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDUSTRIAL EXTENSION BUREAU - Petitioner(s)

Versus

R. D. THAKORE - Respondent(s)

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Appearance :

MR ALPESH RAJPURIYA for Petitioner(s) : 1,
MR JIGAR P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 23/12/2005

CAV JUDGMENT

1.By filing this petition, the petitioner has challenged the judgment and award passed by the Presiding Officer,

Labour Court, Ahmedabad dated 5.1.1999 in Reference (LCA)No. 1644 of 1991, by which the Labour Court has directed the petitioner to reinstate the respondent – workman on her original post with back wages for the intervening period.

2. It can be noticed from the record that the respondent – workman had been engaged on purely temporary and ad hoc basis and was being paid Rs.15/- per day and later on she was paid Rs.25/-. It is the case of the petitioner that the respondent was engaged for a particular project work and the said contract was for a period of 3 years which was commenced from January, 1987 and had been completed in the year 1990 and since then the respondent – workman was discontinued. Ultimately, the respondent – workman raised the industrial dispute which was referred to the Labour Court, Ahmedabad and numbered as Reference (LCA)No.1644 of 1991. The Labour Court, Ahmedabad after appreciating the evidence on record and hearing the respective parties, has been pleased to direct the present petitioner to reinstate the respondent on her original post with back wages.

3. Being aggrieved and dissatisfied by the judgment and award dated 5.1.1999 passed by the Labour Court, Ahmedabad in Reference (LCA)No.1644 of 1991, the petitioner has filed this petition under Article 226

and 227 of the Constitution of India.

4. The learned advocate appearing on behalf of the petitioner has submitted that the termination of services of the respondent – workman cannot be termed to be retrenchment inasmuch as looking to the definition of Section 2(oo) (bb), it would be clear that the respondent – workman was engaged on a project and had no right to continue on the project for which she was engaged had been over. It is, therefore, submitted that the Labour Court has erred in allowing the reference and ordered reinstatement with back wages. He further submitted that belated reference would not have been maintainable inasmuch as the industrial dispute had not been existing when the matter was referred to the Labour Court. He submitted that the concerned workman has not produced material on record to show that she has continuously worked for the organization and, therefore, the Labour Court ought not to have awarded reinstatement with full back wages to the respondent – workman. It is, therefore, requested to allow the present petition by quashing and setting aside the impugned judgment and award.

5. On the other hand, Mr.Rajesh Mankad for Mr.Jigar Raval learned advocate appearing for the respondent has opposed this petition. He submitted that the Labour

Court, while deciding the reference, has considered all the issues involved and after framing the issues has come to the conclusion that there is no provision with regard to the time limit under the Industrial Disputes Act. He submitted that there is a breach of the provisions of Section 25(F), (G), (H) in the present case and, therefore, the Labour Court is completely justified in directing the petitioner to reinstate the respondent – workman on her original post with full back wages. He further submitted that the respondent – workman was not gainfully employed and there was no counter to this evidence and therefore, the Labour Court has rightly granted full back wages. It is, therefore, requested to dismiss the present petition.

6. Heard the learned advocates for the parties.

7. After appreciating evidence on record, the Labour Court has come to the conclusion that the respondent has worked for 240 days in a preceding year and in spite of the said fact, the petitioner has terminated the services of the respondent – workman. The Labour Court has also come to the conclusion that the petitioner institute has not complied with the provisions of Section 25(F) of the Act. The Labour Court has also come to the conclusion that the petitioner institute has not given any notice or the notice pay for

termination of the services of the respondent – workman and, therefore, retrenchment of the respondent – workman is without following due process of law. The Labour Court has also come to the conclusion that the respondent – workman was not gainfully employed. In that view of the matter, the direction for reinstatement cannot be interfered with.

8. As stated above, the respondent – workman was not gainfully employed. However, there cannot be a straight jacket formula for granting the back wages. Since the respondent – workman was engaged as a daily wager and looking to the nature of work being performed by the respondent – workman, it would be in the fitness of things that the petitioner is directed to pay the respondent – workman 40% back wages for the intervening period instead of full back wages as has been awarded by the Labour Court.

9. Under the circumstances, this petition is partly allowed. The petitioner is directed to reinstate the respondent – workman on his original post as a daily wager. The petitioner is also directed to pay 40% back wages for the intervening period to the respondent – workman instead of full back wages as has been awarded by the Labour Court. The petitioner is further directed to pay 40% back wages as stated above to the respondent

within a period of three months from the date of receipt of the writ of this order. Rule is made absolute to the aforesaid extent.

(SHARAD D DAVE, J)

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